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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 11th September 2023

No. 13/2/22-HII(2)-2023/13234.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 54/2020 dated 03.07.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

HARMEET SINGH S/O ISHANR SINGH R/OHOUSE NO. 584, MORINDA ROAD,
WARD NO.8, KHANPUR, SAS NAGAR, MOHALI, PUNJAB. (Workman)

AND

1. THE DIRECTOR/PRINCIPAL, GOVT. MEDICAL COLLEGE AND HOSPITAL EDUCATION & RESEARCH, CHANDIGARH ADMINISTRATION, SECTOR 32 UT CHANDIGARH.
2. GOVERNMENT OF INDIA MINISTRY OF FAMILY AND HEALTH WELFARE, SECTION 2 THROUGH ITS SECRETARY, NEW DELHI. (Management)

AWARD

1. Harmeet Singh, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that earlier workman filed petition under Section 2-A of the ID Act, reference was sent to the Chandigarh Administration, who further sent referred for adjudication to the Labour Court, U.T. Chandigarh and the same was declined by the then Presiding Officer of the Labour Court, and contractual employee was held not to be employee of Government Medical College & Hospital (GMCH). The present case is filed on the basis of fresh cause of action and on different footings as below:—

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- A. The workman was appointed through the contractor against the post of Ward Attendant. Later on the contractor left. The workman continues to serve more than 240 days continuously without any break. The workman was paid salary by the Director of the GMCH. Thereafter, the workman started claiming regularisation of his services but his services were orally terminated without any show cause notice, charge sheet or without following mandatory provisions of the ID Act.

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- B. The workman filed case before the Assistant Labour Commissioner (ALC) under the Minimum Wages Act, including other aggrieved workers. The claim was allowed. The Award was passed by Sh. Hoshiar Singh, the then ALC. The management challenged the Award of ALC and filed CWP No.8472 of 2002 before the Hon'ble High Court of Punjab & Haryana. The writ petition was dismissed. The management /GMCH filed LPA No.426 of 2015, vide which the Hon'ble High Court directed the management/ GMCH to pay an amount of ₹17,982/-. The said amount was paid through the Court of Chief Judicial Magistrate, Chandigarh, which the workman received from the Court in view of the Award passed by ALC. In this way workman became the employee of GMCH i.e. management No. 1 & 2. The Award passed by the then Labour Court, U.T. Chandigarh became redundant. The SLP is still pending for adjudication before the Hon'ble High Court.
- C. The workman along with others workmen moved various representations to the management No.1 & 2 for regularisation of their services, but nothing was done by the management.
- D. The junior workmen to the workman were retained by the management and they are still retained by the management and they are still continuing. Even thereafter, many posts were filled by the management without considering the case of the workman. There are many hospitals under the jurisdiction of Chandigarh Administration, particularly in Sector 48 and many vacancies and many posts of Lt. Attendant are still lying vacant. The management No.1 & 2 are likely to start recruitment. The workman deserves to be appointed against the post.
- E. Finding no other alternative, workman sent registered legal notice to the management and Union of India. The Union of India vide its letter dated 21.08.2019 replied the legal notice.
- F. The whole action on the part of the management in termination, the services of the workman is illegal, unlawful, unconstitutional and contrary to the mandatory provisions of the ID Act. Said illegal termination deserves to be set aside and the workman deserves to be reinstated with continuity of service, full back wages and consequential benefits.
- G. The workman is not gainfully employed anywhere in India with Government or semi-Government or private organisation.
- H. The cause of action arose in the year 1996, when the workman was employed Ward Attendant. It further arose when services of the workman terminated illegally without following the mandatory provisions of law. Further cause of action arose when ALC passed the Award in favour of the workman including other workmen and it again arose when department filed CWP, which was dismissed and the department filed LPA and in LPA Hon'ble High Court directed the department to pay ₹17,982/- which was paid through cheque by the management. It further arose when ALC directed the workman to approach the Labour Court. The cause of action is recurring.

The claim statement is well within territorial jurisdiction of the present Court. Prayer is made that termination order may be set aside being unlawful, unconstitutional, illegal, null, void and void *ab-initio*. The workman may be reinstated against the same post with continuity of services, full back wages with continuity of service, seniority and all other consequential benefits.

3. On notice management No.1 & 2 contested the claim statement by filing joint written reply wherein preliminary objections are raised on the ground that the claim statement in fact is a second reference for the same cause of action, praying for setting aside termination of the workman by contractor M/s Enterclimax Security Pvt. Ltd. vide letter dated 31.12.1997 and claiming reinstatement is not legally maintainable being barred by '*res-judicata*' because the workman earlier approached this Court against the aforesaid termination order, which was dismissed by this Court. Further, the second reference on the same cause of action is badly time barred at this stage. The present claim statement is bad for non-joinder of necessary party. The workman was engaged as well as his services were terminated by the contractor

M/s Enterclimex Security Co. Pvt. Ltd. The contractor who is necessary party in the present litigation has not been impleaded as a party.

4. Further on merits, it is stated that no fresh cause of action has arisen against the management. The pleas taken by the workman are un-founded. The workman was not engaged by the answering management. As per agreement executed with the contractor, persons engaged by the contractor were/are employees of the contractor for all intents and purposes. The relevant part of contract agreement is re-produced as under :—

"Contract agreement read with clause 10(B.I). The persons deployed by the contractor for work in Government Medical College Hospital, Sector-32, Chandigarh shall be the employees of the contractor for all intents and purposes and in no case, there shall be a relationship of employer and employees between the said persons and the Institute. Clause 10(B.3) provides that the contractor shall ensure that all the employees should get minimum wages and other benefits as are admissible under various Labour Laws. As such no liability of any contractual worker lies with this institute."

The answering management did not issue any appointment letter to the workman. As such, there is no employer-employee relationship between the answering management and workman.

5. The order passed in CWP No.8472 of 2002 and interim order(s) passed in LPA No.426 of 2015 have no relation or nexus with the issue(s) now sought to be raised by the workman. In the said litigation, the issue was / is regarding rate of wages or wage rate to be paid to the persons engaged by the contractor (s) / outsourcing agency/agencies. The prayer of the workman in the claim petition filed before the Authority under The Minimum Wages Act, U.T, Chandigarh was limited to the payment of difference of wages between the minimum rates of wages notified by the Chandigarh Administration and the wage actually paid to the workman by the contractor challenging the termination order and claiming re-instatement was not the issue in said litigation. The Hon'ble High Court had directed to ensure the Payment of Minimum Wages in view of the statutory provisions contained in The Minimum Wages Act and did not hold that the workmen are employee of the answering management and there was / is employee-employer relationship between the answering management and workman. In para 3 of legal notice dated 13.08.2018 the workman himself has admitted that his claim against termination of his services by the contractor vide letter dated 31.12.1997 was rejected by the Tribunal. The aforesaid order in CWP No. 8472 has not attained finality and stand challenged in LPA No.426/2015 which is pending for adjudication and only interim orders are passed in said LPA. Said interim order is of no avail to the workman. The workman was employed as well as his services were terminated by the contractor and not by the answering management. Thus, question of regularisation does not arise, especially when the workman is not working in the GMCH and has not placed on record any document/letter to show that he was ever appointed by the answering management. The workman has not given any details of so called representation, therefore answering management is not in a position to respond the averments made and reserve its right to respond and reply as and when the workman specify or attach the so-called representations. The persons engaged by the contractor or outsourcing agency are employees of the contractor concerned and not of the answering management. The contractor appoints the Attendant(s) on contract basis through outsource at their own. Therefore, the workmen were employees of the contractor concerned for all intents and purposes. The answering management has nothing to do or has no role in the engagement and /or termination by the contractor. Further, the workman earlier had approached this Court against the termination by the contractor. The said claim / petition was dismissed. As such, the pleas sought to be advanced by the workman that junior had been retained carry no credence and is/are of no avail to the workman. The claim put forth by the workman through his counsel by way of legal notice dated 13.08.20218 was duly examined and a detailed reply dated 26.11.2019 was sent to the workman's counsel rejecting his claim. It is denied for want of knowledge that workman is not gainfully employed. The present claim statement is abuse of law. The reliance being placed upon orders passed in CWP and LPA are no avail to the workman when the workman has already availed the

remedy against his termination and this Tribunal dismissed his claim statement which has now attained finality. That being so, the present claim statement is not maintainable and barred by principle of *res-judicata* and barred by limitation. The territorial jurisdiction of the Court is not disputed. Rest of the averments of claim statement are denied as wrong and prayer is made that claim statement may be dismissed with costs being not legally maintainable and devoid of merits.

6. The workman filed replication wherein the contents of written reply except admitted facts, are denied as wrong and averments of claim statement are reiterated.

7. From the pleadings of the parties, following issues were framed vide order dated 04.03.2022:—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the claim of the workman is barred by principle of *res-judicata* ? OPM
3. Whether the claim of the workman is time barred ? OPM
4. Whether the claim of the workman is bad for non-joinder of necessary party ? OPM
5. Relief.

8. In evidence workman Harmeet Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 20.04.2023 Learned Representative for the workman tendered documents Exhibit 'W1', Exhibit 'W2' and Mark 'A' to Mark 'E'.

Exhibit 'W1' is the certified copy of Execution Application bearing filing No. 2578/2016 before the court of Ld. CJM, Chandigarh, titled as Shri Ajay Kumar & Ors. Vs Govt. Medical College & Hospital, Sector 32, Chandigarh & Ors. seeking to execute the order dated 26.02.1999 in Application No.10/1998 passed by the court of Shri S. S. Chauhan, Authority under the Minimum Wages Act and further in view of the order dated 19.03.2015 passed by the Hon'ble High Court in CMs-848 and 849-LPA-2015 in/and LPA No.426 of 2015.

Exhibit 'W2' is certified copy of zimni order dated 11.07.2016, 23.08.2016, 01.10.2016, 09.11.2016, 28.11.2016, 07.12.2016, 15.12.2016, 05.12.2016, 21.12.2016, 03.01.2017, 16.01.2017, 21.01.2017, 04.02.2017, 01.03.2017, 05.04.2017, 29.04.2017, 30.05.2017, 31.07.2017, 29.09.2017, 02.12.2017, 06.12.2017 relating to the court of Shri Akashdeep Mahajan, Addl. Civil Judge (Sr. Div.), Chandigarh, pertaining to execution application filing No. 2578 of 2016.

Mark A' is photocopy of application dated nil moved by workmen Sohan Singh & Ors. to G.M.C.H. through Shri S.K. Guleria, Advocate regarding joining report of 18 workmen.

Mark 'B' is photocopy of order dated 05.12.1995 of Medical Superintendent, G.M.C.H, Chandigarh.

Mark 'C' is photocopy of joining report dated 03.05.1995 of Bikram Singh S/o Surjan Singh.

Mark 'D' is photocopy of joining report dated 08.05.1995 of Sohan Singh.

Mark 'E' is photocopy of joining report dated 03.05.1995 of Lalit Kumar S/o Ramanand.

9. On 02.05.2023 Learned Representative for the workman tendered document Exhibit 'W3' i.e. copy of order dated 19.03.2015 passed by the Hon'ble High Court in CMs-848 and 849-LPA-2015 in/and LPA No. 426 of 2015 titled as Govt. Medical College & Hospital, Chandigarh Versus Authority appointed under Minimum Wages Act and closed the evidence of the workman in affirmative.

10. On the other hand, management examined MW1 Sanjay Kumar - Senior Assistant, Establishment Branch IV, GMCH, Sector 32, Chandigarh who tendered his affidavit Exhibit 'MW1/A'.

11. The management also examined MW2 Surinder - Junior Assistant, Establishment Branch - IV, GMCH, Sector 32, Chandigarh, who tendered his affidavit Exhibit 'MW2/A' along with document

Exhibit 'MW2/1' i.e. copy of letter dated 31.12.1997 issued by Chief Controller for Enterclimax Security to The Director Principal, GMCH, Sector 32, Chandigarh relating to the subject of removal of the contractual Ward Attendants.

12. On 03.07.2023 Learned Law Officer for the management closed the evidence.

13. I have heard the arguments of Learned Representative for the workman and Learned Law Officer for the management and perused the judicial file. My issue-wise finding are as below :—

Issue No. 1 & 2 :

14. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 is on the management.

15. To prove its case, workman Harmeet Singh examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. To support his oral version Learned Representative for the workman referred documents Exhibit 'W1' to Exhibit 'W3' and Mark 'A' to Mark 'E'.

16. To rebut the case of the workman, management examined MW1 Sanjay Kumar, who vide his affidavit Exhibit 'MW1/A' deposed the entire contents of written reply which are not reproduced here for the sake of brevity.

17. For corroboration Learned Law Officer for the management referred to testimony of MW2 Surinder, who vide his affidavit Exhibit 'MW2/A', apart from the contents of written reply, deposed that these cases are very old i.e. way back of year 1995-96 and the dealing official / Incharge of Establishment - IV Branch had supplied the record available for drafting reply in the instant matter to legal cell. No such joining report, salary disbursement and muster roll since 1995 of workman is traceable. As per record, the workman was deployed on contract basis through outsource by the contractor M/s National Security & Allied Services, Jalandhar. Therefore, all the record of outsource employee, is concerned with the contractor and termination by contractor M/s Enterclimax Security Co. Pvt. Ltd. To support oral version of MW2, Learned Law Officer referred Exhibit 'MW2/1'.

18. From the oral as well as documentary evidence led by the parties, it comes out that the workman was appointed against the post of Ward Attendant through contractor National Security & Allied Services, Head Office Punjab (as mentioned in the legal notice dated 13.08.2018 relied upon by the workman). The workman has alleged that his services were terminated without issuing any show cause notice, charge sheet or without following the mandatory provisions of the ID Act. The workman in his claim statement did not mention the date of appointment and date of termination of his services. However, it is own case of the workman that previously he filed a claim statement before the Labour Court/Industrial Tribunal, U.T. Chandigarh challenging his termination order and the said claim statement/industrial dispute reference was dismissed by this Court (in para 3 of legal notice dated 13.08.2018, relied upon by the workman, the date of award passed by the Industrial Tribunal-cum- Labour Court, U.T. Chandigarh is mentioned as 05.03.2007). In the entire pleadings the workman did not mention the particular and details of the previous claim statement wherein he had challenged his termination order. The workman also did not disclose the particular of said claim statement and also did not mention the date of passing of Award vide which the aforesaid claim statement/ID Act has declined by this Court. However, from the copy of legal notice dated 13.08.2018 (relied upon by the workman) in para 3 it is mentioned that his clients filed a case before Labour Commissioner, U.T. Chandigarh for terminating their services. The reference was sent to the appropriate Government of U.T. Chandigarh and reference was also sent to the Labour Court for adjudication but their claim was dismissed by the Labour Court-cum-Industrial Tribunal, Chandigarh vide order dated 05.03.2007. The workman did not place on record the copy of pleadings in the previous industrial dispute reference decided vide Award dated 05.03.2007 by this Court and also did not place on record copy of the said Award dated 05.03.2007. However, the fact remains that the workman in previous industrial dispute reference challenged his termination order and the said previous industrial dispute reference was dismissed by

this Labour Court-cum-Industrial Tribunal vide order dated 05.03.2007. Till date the workman has not challenged the order/Award dated 05.03.2007, thus the same has become final.

19. It is own plea of the workman that he was appointed to the post of Ward Attendant by the contractor and later on the contractor left. The workman in the claim statement did not mention up to which year he remained under the contractor or in which month or year the contractor left. However, when put to cross-examination the workman states that he worked as outsource employee in GMCH up to March 1998, he refused to work under new outsource agency, therefore, he was terminated from job. He was not issued any termination letter or relieving letter by the GMCH, Sector 32, Chandigarh. After termination he filed a case seeking payment of minimum wages before Assistant Labour Commissioner, U.T. Chandigarh. The workman did not plead that till what/which date he was paid salary by the contractor.

20. The workman has alleged that although his previous claim statement whereby he challenged the termination order and sought reinstatement was dismissed by this Court but now present cause of action arises in his favour in view of the interim order passed by the Hon'ble High Court in LPA No.426/2015. Learned Representative for the workman argued that the workman filed claim application before the Assistant Labour Commissioner, U.T. Chandigarh under the Minimum Wages Act, which was allowed by the Assistant Labour Commissioner. The management challenged the order of Assistant Labour Commissioner by filing CWP No.8472 of 2002 which was dismissed. Thereafter management of GMCH filed LPA No.426/2015 before the Hon'ble High Court wherein interim order has passed and direction was issued to the management /GMCH to pay arrears of ₹17,982/- to the workman. The management paid the said arrears to the workman by cheque and said amount was received by the workman in the Court of CJM, Chandigarh. LPA is pending. Learned Representative for the workman laid much stress upon the fact that since the payment is made by management of GMCH to the workman, therefore the previous order/Award dated 05.03.2007, whereby the claim of the workman challenging termination order and seeking reinstatement was dismissed has become redundant. The workman has become employee of GMCH/management No.1 & 2 therefore entitled to regularisation of his services.

21. On the other hand, Learned Law Officer for the management argued that claim application before the ALC is limited to the payment of difference of wages between the minimum rate of wages notified by the Chandigarh Administration and the wage actually paid to the workman by the contractor. The termination order was neither under challenge nor an issue before the ALC. The payment of difference of wages made by the management in compliance with the direction of Hon'ble High Court in LPA No.426/2015 in no manner has any connection with the termination or regularisation of services of the workman. To my opinion, it is undeniable fact that the workman filed claim application before the ALC, U.T. Chandigarh seeking recovery of difference of wages of Minimum Wages Act and in the said case neither the termination order was under challenge nor in issue. The matter confined in claim application before the ALC was payment of difference of wages only. In this regard, AW1 in his cross-examination stated that after termination he filed a case seeking payment of wages before the ALC, U.T. Chandigarh. The workman has placed on record copy of order dated March 19, 2015 passed by the Hon'ble High Court in CMs 848 and 849- LPA-2015 in /and LPA No. 426/2015 titled as Government Medical College & Hospital, Chandigarh *Versus* Authority appointed under the Minimum Wages Act vide Exhibit 'W3'. The relevant portion of Exhibit 'W3' is reproduced as below:—

"The Chandigarh Administration is impleaded as a party. It shall bring all the necessary notifications relating to the applicability of the Minimum Wages Act to the Government Medical College & Hospital, Sector-32, Chandigarh-appellant.

In the meantime, the appellant shall make the payment due to those who had filed execution on furnishing necessary surety for restitution of the amount or excess amount, if any, to the satisfaction of the executing authority.

List for hearing on 14.07.2015."

Admittedly the LPA No. 426/2015 is pending before the Hon'ble High Court. Exhibit 'W2' is the copy of all the zimni orders passed in the execution proceedings titled as **Ajay Kumar & Others Versus GMCH-32, Chandigarh** before the Court of ACJ(SD). The relevant portion of order dated 07.12.2016 of ACJ(SD), Chandigarh is reproduced as below :—

"Sh. Yadwinder Singh, Law Officer, GMCH-32 Chandigarh for the respondents no. 1 & 2 suffered a statement that he has brought 29 demand drafts total amounting to Rs.5,21,438/- issued in favour of 29 persons i.e., decree holders mentioned in the execution application as per the detailed description given in letter dated 02.11.2016 which is already Ex.PX. Kindly placed on record all the 29 demand drafts as mentioned in Ex.PX and it is requested that the demand drafts shall be handed over to the decree holders on their furnishing surety as per the orders of Hon'ble High Court, Chandigarh. In view of above, the above said demand drafts are taken and Ahlmad of this court is directed to tagged the above said drafts in a proper way.

Learned counsel for the applicant undertake to furnish surety bonds within a week in view of order passed by the Hon'ble High Court, Chandigarh. Statement recorded separately. Now, to come up on 15.12.2016 for furnishing the security by the applicants."

22. It is undeniable fact that all the applicants/DHs of execution proceedings furnished requisite surety and the amount of ₹17,982/- each were released to them in the form of demand draft. Moreover, it is own case of the workman that in compliance with the interim order of Hon'ble High Court passed in

LPA No. 426/2015 the GMCH, Sector 32 made payment which was received by the workman through the executing Court of CJM/ACJ(SD), Chandigarh.

23. Now the question before this Court is if the interim order dated 19.03.2015 / Exhibit 'W3' in any manner relate to the termination or regularisation of service of the workman. Answer is 'No' because payment of difference of wages to the GMCH, Sector 32 to the workman in compliance with the order of Hon'ble High Court in the matter relating to payment of wages under Minimum Wages Act, cannot be interpreted to mean that by making payment by GMCH/or receiving payment by the workman of difference of wages, the termination order will become invalid of its own or the previous Award dated 05.03.2007 passed by Labour Court, Chandigarh dismissing the IDR/claim statement of the workman seeking to set aside termination order, will become redundant. The termination of service, reinstatement, regularisation does not fall within the purview of Minimum Wages Act, hence order Exhibit 'W3' in no manner has any impact on the termination of the workman. The GMCH, Sector 32, Chandigarh/ management No.1 & 2 neither issued any appointment letter nor termination order to the workman. Learned Representative for the workman raised objection to the termination order dated 31.12.1997 /Exhibit 'MW2/1' brought into evidence by MW2. Exhibit 'MW2/1' is the letter of termination the services of the workman by the employer/contractor Enterclimex w.e.f. 31.12.1997. The workman has not impleaded the employer Enterclimex as party to the claim statement, thus claim statement is bad for non-joinder of necessary party. Above all during course of arguments Learned Representative of the workman failed to controvert the fact that in previous IDR the termination order vide letter dated 31.12.1997 / Exhibit 'M2/1' was under challenge. If the termination Exhibit 'MW2/1' is ignored, then also workman has failed to prove that his services were terminated by management No.1 & 2/GMCH Sector 32, Chandigarh. AW1 in his cross-examination stated that he worked as outsource employee in GMCH-32, Chandigarh up to March, 1998. He refused to work under the new agency, therefore he was terminated from the job. He was not issued any termination letter by GMCH, Sector 32, Chandigarh. The aforesaid version of AW1 would prove that from the date of appointment till termination of service he was working with GMCH, Sector 32, Chandigarh being outsource employee under the contractor. In this manner the workman was employee of the contractor not GMCH, Sector 32, Chandigarh. So the question of termination of services of the contractual employee by the

GMCH, Sector 32, Chandigarh does not arise. The contractual employee to seek regularisation of services must come through the selection process. Here it is not the case of the workman that they have qualified any selection process. Hon'ble High Court of Delhi in case of ***Desh Deepak Srivastava Versus Delhi High Court & Another, CWP (C) No. 9570/2015*** held that a contractual employee cannot claim any right to regularisation or absorption of services, if continued on an *ad-hoc* for decades.

24. Moreover, the issue of termination of the services of the workman have already been adjudicated upon by this Labour Court & Industrial Tribunal, U.T. Chandigarh vide Award dated 05.03.2007 vide which the claim of the workman seeking to set aside termination order, was discussed. The workman did not challenge the Award dated 05.03.2007 before the competent Court of law. Therefore, the Award dated 05.03.2007 has attained finality. The workman is not entitled to re-agitate the same issue which is already decided by the competent court and which has become final. Consequently, the present claim is barred by principle of *res-judicata* under Section 11 of CPC.

25. Accordingly, issue No.1 is decided against the workman and in favour of the management. Issue No.2 is decided in favour of the management and against the workman.

Issue No. 3 :

26. Onus to prove this issue is on the management.

27. The workman has alleged that his services were terminated in the year 1998. He raised 2nd time industrial dispute by raising demand notice in the year 2019 and presented the present claim on 25.08.2020 i.e. after about 22 years of raising demand notice. Thus, the present claim statement is barred by limitation.

28. Accordingly, this issue is decided in favour of the management and against the workman.

Issue No. 4 :

29. Onus to prove this issue is on the management.

30. The contractor / (last contractor i.e. Enterclimex) was the employer of the workman. The workman has challenged his termination of services without impleading his employer, who was a necessary party. Thus, the present claim statement is bad for non-joinder of necessary party.

31. Accordingly, this issue is decided in favour of the management and against the workman.

Relief :

32. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 03-07-2023.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 11th September 2023

No. 13/2/29-HII(2)-2023/13242.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **16/2019 dated 01.08.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

RAJNI, H.NO. 118-A, SECTOR 30-B, CHANDIGARH (Workman)

AND

M/S ALLENGERS MEDICAL SYSTEMS LTD. SCO NO. 212, 213, 214 SECTOR 34A,
CHANDIGARH. (Management)**AWARD**

1. Rajni, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated averments of claim statement are that the workman was appointed as Deputy Executive Grade - E-2 vide letter No.AMSL/HRD/APT/2008/1108 dated 19.08.2008. The workman was on probation for a period of six months on a fixed wages of ₹5,000/- per month. The workman was allotted employee code No.1106. The workman was confirmed in service w.e.f. 19.02.2009, keeping in view her performance during the period of probation. As a special case, the management decided to give raise of ₹750/- per month to the workman. The total wages came to ₹5,787/-. The workman was promoted as Executive Service Admn. in Grade - E-3 w.e.f. 01.04.2011. Keeping in view her sincerity and contribution towards the growth of company, the workman was given a rise of ₹1,885/- per month w.e.f. 01.04.2011, which include promotional raise and annual increment for the year 2010-11 vide letter No.AMSL/HRD/AI/2011/3252 dated 09.05.2011. The workman then started getting ₹8,167/- per month. Since the date of appointment, the workman used to get annual increments and appreciation letters every year. The work & conduct of the workman was appreciated by all her superiors and colleagues. There was no complaint whatsoever against her work & conduct. Although the workman was designated as Executive Service Admn, she had no managerial, administrative or supervisory duties to discharge. The workman discharging any kind of duties entrusted to her by the management as required from time to time. The workman remained in continuous and un-interrupted employment up to 21.01.2019 when her services were illegally & wrongfully terminated vide letter dated 21.01.2009, which was received by the workman on 02.02.2009. On 21.01.2019 the Manager of HR of the management called the workman in her office and ordered the workman to resign from services. The workman asked for the reasons of resignation when there was no complaint against her. The management did not give any reason to the workman of obtaining resignation. The workman refused to submit resignation. The Manager HR of the management told the workman that her services are no more required as per the decision of the management. On 02.02.2019 the workman received letter No.AMSL/HRD/TER/2018/0068 dated 21.01.2019, on the subject termination from service. The services were terminated with immediate effect as per Clause 3 of the letter of appointment. Clause 3 of the appointment is arbitrary, having no legal value in the eyes of law. Even then the management has violated Clause 3 by not giving one month notice or wages in lieu of notice. Any worker who has completed 240 days preceding 12 months from the date of termination, his / her services cannot be terminated without complying Section 25-F of the ID Act. On 29.03.2019 the workman received letter No.AMSL/HRD/F&F/2019/0129 dated 06.03.2019 on the subject full & final settlement. With a letter the management also enclosed a cheque

No.003180 dated 01.03.2019 for ₹50,615/- towards full & final settlement. The management also enclosed full & final settlement for the month of January 2019, in which the management had mentioned that the workman has resigned from the services on 21.01.2019 and reasons of separation is mentioned as RESIGN, which is wrong and *malafide*. The workman has not resigned from the services rather services of the workman have been illegally and wrongfully terminated by the management without assigning any reason and notice. It was really shocking that the management has also enclosed a threatening full & final settlement receipt vide which the workman has been asked to acknowledge the receipt of amount of ₹5,061/- and also confirm that the workman neither had any outstanding from the company nor any dispute with them in this regard. The workman is aware that use of company's intellectual property after leaving the company constitutes an offence. The workman promise not to do the same. If at any time, the workman used the intellectual property of the company, then they can take legal action against her. The letter under reference was replied by the workman on 30.03.2019 stating therein that the amount was received by the workman under protest and without prejudice to her right of reinstatement. The management also violated Section 25-F of the ID Act. No charge sheet was issued, no inquiry was held that the workman was not paid retrenchment compensation at the time of termination. The wages of workman at the time of termination were ₹18,557/- per month. The workman remained unemployed during the period from the date of termination till date. The workman served upon the management a demand notice dated 12.04.2019 for her reinstatement. The management did not take the workman on duty after receiving the demand notice. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. The dispute could not be settled within the stipulated period. The action of the management in terminating the services of the workman is illegal, wrongful, motivated, against the principles of natural justice and is unfair labour practice. Prayer is made that the workman may be reinstated with continuity of service without any change in her service conditions and full & final attendant benefits.

3. On notice, management contested the claim statement by filing the written reply on 17.02.2021 wherein it is stated that Shri Amit Arora-Manager (Legal & Collections) is fully conversant with the facts of the present case. There is authorization / resolution in favour of Shri Amit Arora. It is stated that the facts that workman was appointed as Deputy Executive Grade - E-2 vide letter No.AMSL/HRD/APT/2008/1108 dated 19.08.2008; the workman was on probation for a period of six months on a fixed wages of ₹5,000/- per month; the workman was allotted employee code No.1106; the workman was confirmed in service w.e.f. 19.02.2009, keeping in view her performance during the period of probation; as a special case, the management decided to give raise of ₹750/- per month to the workman; the total wages came to ₹5,787/-; the workman was promoted as Executive Service Admin. in Grade - E-3 w.e.f. 01.04.2011; keeping in view her sincerity and contribution towards the growth of company, the workman was given a rise of ₹1,885/- per month w.e.f. 01.04.2011, which include promotional raise and annual increment for the year 2010-11 vide letter No.AMSL/HRD/AI/2011/3252 dated 09.05.2011; the workman then started getting ₹ 8,167/- per month; since the date of appointment, the workman used to get annual increments and appreciation letters every year; the work & conduct of the workman was appreciated by all her superiors and colleagues and there was no complaint whatsoever against her work & conduct; are matter of record and need no reply. It is further stated that the workman was given Grade 'B' during her performance appraisal in 2014-15 and Grade 'A' in performance appraisal 2015-16. A Performance Improvement Plan (PIP) was issued to her on 06.02.2015 and 28.01.2017 as her work was not satisfactory. The workman was designated as Executive Service Admn. and was discharging managerial, administrative as well as supervisory duties. The workman was discharging supervisory and administrative duties as entrusted to her. The workman continued in service till 21.01.2019 is a matter of record. The services of the workman were terminated vide letter dated 21.01.2019 in terms of the letter of appointment. The termination of the services of the workman was strictly in accordance with the letter of appointment and the terms binding between her and the company. Termination was legal and as per the terms of employment conditions. No request for issuance of a resignation was raised by the company. However, the services of the workman were not required by the company and her employment was terminated in terms of the contract / letter of appointment dated 19.08.2008. Clause 3 of the termination letter dated 21.01.2019 is a matter of record. It is denied as wrong that workman was not given a salary for one month as per

Clause 3. There is neither a violation of Clause 3 of appointment letter nor Section 25-F of the ID Act. The workman is not entitled to the benefits of the same. In terms of Clause 3, the workman was given one month salary in lieu thereof. The break-up is as under:-

Heads	Normal	YTD Salary	Salary	Arrears	Adjustments	Supplementary	Total
Basic	6309.00	204533.00	4274.00				4274.00
HRA	2839.00	92038.00	1923.00				1923.00
CCA	1735.00	56248.00	1175.00				1175.00
Education Allowance	789.00	25579.00	534.00				534.00
Conveyance	2366.00	76705.00	1603.00				1603.00
Medical	1734.00	56214.00	1175.00				1175.00
Gratuity Amount	303.00		36400.00				36400.00
Bonus		36122.00	14645.00				14645.00
PLI Secured	2482.00	67727.00	1681.00				1681.00
Leave encash		4833.23	6300.00				6300.00
Notice Amount			18240.00				18240.00
Gross earning	18557.00	619999.23	87950.00				87950.00
PF	972.00	29705.00	659.00				659.00
EPF Deduction		102.00					0.00
ESIC	320.00	7524.00	217.00				217.00
Employee Cont. GTI	59.00	1173.00	59.00				59.00
Others deductions		1900.00					0.00
Gross Deduction	1351.00	40404.00	935.00				935.00
Net Payable	17206.00	57959523.00	87015.00				87015.00

The balance amount as needed to be given to the workman was ₹50,615/- (after deducting amount of gratuity) which was duly given to her and she accepted the same. The table of calculation above includes salary for the month of February 2019, which is shown as salary for the notice period. Admittedly, the salary of the workman was ₹18,557/-. Along with letter dated 06.03.2019 cheque No.003180 dated 01.03.2019 for ₹50,615/- of HDFC was sent to the workman as full & final settlement of her account. The workman thereafter got the cheque encashed on 03.04.2019. In the full & final settlement attached for the month of January 2019 is only a clerical, typographical mistake that reason for separation has been written as 'resigned'. Her services have been terminated legally. It is untrue that any threatening action was taken by the company. Only a full & final

acknowledgment receipt was supplied along with the cheque. Having encashed the cheque towards full & final settlement inclusive for the month of February 2019 (notice period) she is estopped from claiming any further amount or to challenge her termination. The workman chose not to send back the completed receipt. No objection was raised by her. Other terms are binding upon him. It is denied that any such letter dated 30.03.2019 was received by the company. The services of the workman were terminated as per the agreement and no law has been violated. The workman does not fall under the definition of 'workman' as defined under the ID Act. The termination of services of the workman is a simple termination of employment as under the terms of contract. Section 25-F of the ID Act has not been violated as she is not a 'workman' and this is not a case of 'retrenchment' of workman. Rest of the averments of claim statement are denied as wrong.

4. The workman filed rejoinder wherein the contents of the written statement except admitted facts are denied as wrong and averments of statement of claim are reiterated.

5. From the pleadings of the parties, following issues were framed vide order dated 12.07.2021:—

1. Whether the services of Ms. Rajni were terminated illegally by the management, if so, to what effect and to what relief she is entitled to, if any ? OPW
2. Whether Ms. Rajni is not a 'workman' as defined under Section 2(s) of the ID Act ? OPM
3. Relief.

6. In evidence, the workman Rajni examined herself as AW1 and tendered her affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1/1' to Exhibit 'W1/13'.

Exhibit 'W1/1' is copy of appointment letter of the workman bearing No.AMSL/HRD/APT/2008/1109 dated 19.08.2008 for the post of Deputy Executive Service (Grade 'E-2').

Exhibit 'W1/2' is copy of letter bearing No.AMSL/HRD/CONF/2009/1547 dated 03.02.2009 whereby the services of the workman were confirmed w.e.f. 19.02.2009.

Exhibit 'W1/3' is copy of letter bearing No.AMSL/HRD/AI/2010/2433 dated 01.06.2010 whereby the workman was granted annual increment of ₹465/- w.e.f. 1st April, 2010 and her gross salary was revised from ₹5,817/- to ₹6,282/- per month.

Exhibit 'W1/4' is copy of letter bearing No.AMSL/HRD/AI/2011/3252 dated 09.05.2011 whereby gross salary of the workman was revised from ₹ 6,282/- to ₹ 8,167/- by giving a raise of ₹1,885/- per month w.e.f. 1st April, 2011.

Exhibit 'W1/5' is copy of letter bearing No.AMSL/HRD/AI/2012/4187 dated 04.06.2012 whereby gross salary of the workman was revised by ₹1,898/- w.e.f. 01.04.2012.

Exhibit 'W1/6' is copy of letter bearing No.AMSL/HRD/AI/2012/4313 dated 28.06.2012 whereby gross salary of the workman was revised by ₹1,653/- w.e.f. 01.04.2012.

Exhibit 'W1/7' is copy of appreciation letter dated 21.10.2015 issued to the workman by Shri Suresh Sharma, Chairman & Managing Director.

Exhibit 'W1/8' is copy of letter bearing No.AMSL/HRD/AI/2016/8588 dated 05.07.2016 whereby the workman was granted annual increment of ₹1,204/- for the year 2015-16 and w.e.f. 1st April, 2016 her CTC was revised to ₹19,535/- per month.

Exhibit 'W1/9' is copy of letter bearing No.AMSL/HRD/RL/2016/8989 dated 26.10.2016 whereby salary structure of the workman was revised w.e.f. 1st October, 2016.

Exhibit 'W1/10' is copy of letter bearing No.AMSL/HRD/TER/2018/0068 dated 21.01.2019 whereby services of the workman were terminated.

Exhibit 'W1/11' is copy of letter bearing No.AMSL/HRD/F&F/2019/0129 dated 06.03.2019 whereby cheque

No.003180 dated 01.03.2019 for ₹50,615/- of HDFC Bank towards full & final settlement of account was sent to the workman.

Exhibit 'W1/12' is copy of full & final settlement receipt.

Exhibit 'W1/13' is copy of experience certificate No.AMSL/HRD/R&E/2019/0131 dated 06.03.2019 issued to workman.

7. It is pertinent to mention here that during cross-examination of the workman documents **Exhibit 'M1'** to **Exhibit 'M5'** and **Mark 'X'** were put to her by the management.

Exhibit 'M1' is copy of appointment letter of the workman bearing No.AMSL/HRD/APT/2008/1109 dated 19.08.2008 for the post of Deputy Executive Service (Grade 'E-2') (already exhibited as **Exhibit 'W1/1'**).

Exhibit 'M2' is copy of Performance Improvement Plan of the workman for the period from 06.02.2015 to 05.03.2015.

Exhibit 'M3' is copy of medical certificate related to workman issued by Aarogya Clinics.

Exhibit 'M4' is copy of full & final statement of the workman for the month of January 2019.

Exhibit 'M5' is copy of experience certificate No.AMSL/HRD/R&E/2019/0131 dated 06.03.2019 issued to workman (already exhibited as **Exhibit 'W1/13'**).

Mark 'X' is copy of Performance Improvement Plan of the workman for the period from 28.01.2017 to 27.02.2017. On 01.03.2023 the workman closed her evidence in affirmative.

8. On the other hand, management examined MW1 Amit Arora - Senior Manager (Legal), who tendered his affidavit **Exhibit 'MW1/A'** along with documents **Exhibit 'MW1/1'** to **Exhibit 'MW1/8'**.

Exhibit 'MW1/1' is resolution dated 09.07.2018, passed by the Chairman-cum-Managing Director of the management in favour of Shri Amit Arora - Senior Manager (Legal).

Exhibit 'MW1/2' is job responsibilities with respect to Rajni Kapoor.

Exhibit 'MW1/3' is performance improvement plan bearing start date 06.02.2015 and end date 05.03.2015.

Exhibit 'MW1/3A' is performance improvement plan bearing start date 28.01.2017 and end date 27.02.2017.

Exhibit 'MW1/4' & **'MW1/4A'** is medical certificate for the period 27/04 to 05/05/2018, for the period 01/12 to 07/12/2018 relating to Rajni issued by Aarogya Clinics.

Exhibit 'MW1/5' is hardcopy of print out of e-mails dated 14.11.2014.

Exhibit 'MW1/6' is appointment letter dated 19.08.2008 issued by the management to workman Rajni Kapoor accompanied with details of salary in the form of Appendix-A.

Exhibit 'MW1/7' is letter dated 21.01.2019 of termination from services issued from the management to workman Rajni Kapoor.

Exhibit 'MW1/8' and letter dated 19.06.2019 issued from the management to workman Rajni Kapoor relating to the subject of gratuity form.

(original of documents **Exhibit 'MW1/1'** to **Exhibit 'MW1/8'** except Exhibits **'MW1/5'**, **'MW1/7'** & **'MW1/8'** were produced at the time of recording evidence, which were seen and returned).

On 01.08.2023 Learned Representative for the management closed evidence.

9. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below:-

Issue No. 1 & 2 :

10. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 is on the management. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

11. To prove its case, the workman Rajni examined herself as AW1 and vide her affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported her oral version with documents Exhibit 'W1/1' to Exhibit 'W1/13'.

12. On the other hand, management examined MW1 Amit Arora - Senior Manager (Legal), who vide his affidavit Exhibit 'MW1/A' deposed that he has been authorized by the Board Resolution dated 09.07.2018 to appear in the present case on behalf of the management. He is fully aware about the facts of the present case. He has brought the entire record maintained by the management pertaining to the workman. In his remaining version MW1 has deposed the entire contents of the written statement. MW1 supported his oral version with documents Exhibit 'MW1/1' to Exhibit 'MW1/8'.

13. From the oral as well documentary evidence led by the parties, it comes out that the facts remained undisputed between the parties that workman Rajni was appointed as Deputy Senior Service Grade E-2 vide letter dated 19.08.2008 / Exhibit 'W1/1' by the management; the workman was on probation for a period of six months on fixed wages of ₹5,000/- per month. There is no dispute that the workman was allotted employee code No.1106; the services of the workman were confirmed w.e.f. 19.02.2009; the workman was given a raise of ₹750/- per month and her total wages comes to ₹ 5,787/- per month; the workman was promoted as Executive Service Admin. in Grade E-3 w.e.f. 01.04.2011 and that the workman was given a rise of ₹1,885/- w.e.f. 01.04.2011 and the workman started getting monthly salary of ₹ 8,167/- per month. Further, there is no dispute between the parties with regard to the fact that the services of the workman were terminated by the management vide letter of termination dated 21.01.2019 / Exhibit 'W1/10'.

14. Learned Representative for the management contended that the workman does not fall within the definition of the 'workman' as defined in Section 2(s) of the ID Act because the workman was discharging, managerial, administrative as well as supervisory duties, which falls in exception to Section 2(s) of the ID Act. On the other hand, Learned Representative for the workman argued that the nature of the performance of duties is not to be determined from the designation itself but from the actual nature of duty / work performed by a worker. In the present case, the workman was not authorized to sanction leave, to take any disciplinary action, to grant promotion or demotion to any employee of the management, thus the workman was discharging clerical work and is covered in the definition of Section 2(s) of the ID Act. To support his arguments Learned Representative for the workman referred the case law reported in **2006(4) SCT 1 (SC)** titled as **Anand Regional Co-op. Seedgrowers Union Ltd. Versus Shaileshkumar Harshadbhai Shah** wherein para 11 to 13 it is held as below :—

"11. For determining the questions as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations.

12. Supervision contemplates direction and control. While determining the nature of the work performed by the employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were

some persons working under him whose work is required to be supervised. Being incharge of the section alone and that too it being a small one and relating to quality control would not answer the test.

13. *The precise question came up for consideration in Ananda Bazar Patrika (P) Ltd. v. Workmen [(1970)3 SCC 248] wherein it was held :*

"The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity....."

A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence.

Judging by the said standard, we are of the opinion that the First Respondent did not come within the purview of the exclusionary clause of the definition of workman. Ananda Bazar Patrika (supra) was followed by the court in large number of cases."

15. To my opinion, in the present case the management has failed to prove that the workman had any authority to initiate departmental proceedings against the subordinates or she had power of control or supervision in regard to recruitment, promotion etc. In this regard, MW1 Amit Arora, when put to cross-examination stated that the workman was not competent to sanction leave to any employee of the management or to issue any charge sheet to any employee of the management or to grant promotion or demotion to any employee of the management. MW1 voluntarily stated that this power is only with the management. From the aforesaid version of MW1, it is duly proved on record that the workman was not discharging any managerial, administrative or supervisory duties. Consequently, the workman falls within the definition of a 'workman' as defined in Section 2(s) of the ID Act.

16. It is argued by Learned Representative for the workman that termination order vide letter dated 21.01.2019 / Exhibit 'W1/10' is illegal and contrary to the provisions of the ID Act. On the other hand, Learned Representative for the management argued that the termination of the services of the workman is in accordance with para 3 of the appointment letter Exhibit 'W1/1'. Moreover, the performance of the workman was not as per the desired standard. The workman was given Grade 'B' during her performance appraisal in 2014-15 and Grade 'A' in performance appraisal 2015-16. A Performance Improvement Plan (PIP) was issued to her on 06.02.2015 and 28.01.2017 as her work was not satisfactory. To my opinion, the explanation offered by the management for terminating her services on the ground that her performance was not satisfactory as per the remarks recorded in her Performance Improvement Plan Exhibit 'MW1/3', is unjustified. Because the workman continuously remained in the employment of the management w.e.f. 19.08.2008 to 21.01.2019 except for the period w.e.f. 06.02.2015 to 05.03.2015 i.e. one month, there were no adverse remarks against the workman during her entire service. In this regard, MW1 in his cross-examination admitted as correct that the workman Rajni was performing her work w.e.f. 19.08.2008 and she worked continuously up to 21.01.2019. MW1 admitted as correct that initial appointment of the workman was on probation for a period of 6 months. MW1 admitted as correct that if the workman does not successfully complete probation period, the same can be

extended for a further period of 01 year. MW1 admitted as correct that when workman completed the probation period she was given raised pay of ₹750/- per month. MW1 admitted as correct that the workman joined as Deputy Executive. MW1 admitted as correct that on 01.04.2011 the workman was promoted to the post of Executive Admin and she was given raised pay of ₹1,885/- per month. MW1 admitted as correct that the workman was given regular increment and probation during her continuous tenure of service of ten years. MW1 voluntarily stated that it was given on the basis of performance. MW1 stated that Mr. Ajay Mohan, reporting authority has made a complaint against the workman in the form of remarks in her Performance Improvement Plan /Exhibit 'MW1/3'. MW1 admitted as correct that Exhibit 'MW1/3' pertains to period w.e.f. 06.02.2015 to 05.03.2015. MW1 admitted as correct that from the date of appointment till 05.02.2015 there was no complaint against the work & conduct of the workman and from 06.03.2015 to 28.01.2017 there was no complaint of any kind against the workman. The performance plan / Exhibit 'MW1/3' was for a period of one month only. MW1 admitted as correct that for the service period 2014-15 the performance of the workman was graded 'B' and performance for the period 2015-16 was graded 'A'. The aforesaid version of MW1 supports the plea of the workman that during her entire service, there was no complaint against the work & conduct of the workman. The management has wrongly interpreted the remarks recorded in the Performance Improvement Plan of 1 month / Exhibit 'MW1/3' as complaint. Even if, for the sake of arguments, it is assumed that performance of the workman for a period of one month 06.02.2015 to 05.03.2015 was not satisfactory, in that situation also the adverse remarks recorded for the service period of 1 month cannot be made the basis of termination of service of a workman without compliance of the provisions incorporated in Section 25-F of the ID Act. It is undeniable fact that the workman has performed service for continuous period of more than 240 days in 12 calendar months preceding her termination (termination is w.e.f. 21.01.2019). Thus, the workman fulfills the requirement of Section 25-B of the ID Act. Once the workman has completed 240 days continuous service during the period of 12 calendar months preceding the date of termination, the provision of Section 25-F of the ID Act stands attracted. It would be apposite to reproduce Section 25-F of the ID Act:-

"25F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

By virtue of Section 25-F(a) one month's notice must indicate the reasons for retrenchment. In the present case, the contents of order of termination Exhibit 'W1/10' are as below:—

"This is in reference to your Appointment letter No.AMSL/HRD/APT/2008/1109 dated August 19, 2008.

Your service stands terminated with immediate effect under Para 3 of the above said letter. Your full & final settlement will be processed only after the receipt of all the company's property lying in your possession and NOC from your department."

Now it is necessary to go through Para 3 of the appointment dated 19.08.2008, which is reproduced as below :—

"3. TERMINATION:

In the event of your performance not being of the desired standards during the period, your service can be terminated without assigning any reason or giving any notice. Even after the confirmation, your services can be terminated by either side without assigning any reason by giving one month's notice or one month's basic salary in lieu thereof."

17. In the present case, the perusal of termination letter Exhibit 'W1/10' reveal that before terminating the services of the workman, the management neither issued one month's prior notice incorporating the reason of termination nor offered to pay or paid notice pay in lieu of notice period nor paid any retrenchment compensation to the workman. Moreover, the management has failed to prove that the conditions of termination contained in the appointment letter have any statutory sanction. The employer is not permitted to terminate the services of a 'workman' without assigning any reason; the employer is not permitted to impose terms & conditions of employment on the workman by superseding the provisions of the ID Act. Para/condition No. 3 incorporated in the appointment letter Exhibit 'W1/1' is contrary to the provision of Section 25-F of the ID Act. Para/condition No.3 seems to have been mentioned by the management in the appointment letter/Exhibit 'W1/1' to avoid the liability arising under Section 25-F of the ID Act. Provision of Section 25-F of the ID Act shall prevail over Para/condition No.3 of Exhibit 'W1/1'. As per the judgment of Hon'ble Supreme Court of India referred by Learned Representative for the workman reported in **1988(4) SLR 388** titled as **Narotam Chopra Versus Presiding Officer, Labour Courts & Another**, if the services of an employee are terminated in violation of Section 25-F of the ID Act, 1947, the order of termination is rendered ab-initio void and the employee would be entitled to reinstatement with continuity of service along with full back wages and other allowances. In the judgment of Hon'ble High Court of Punjab & Haryana referred by Learned Representative for the workman reported in **2008(6) SLR 360 (DB)** titled as **M/s New Midh Bhabra Transport Company (P) Ltd. Versus Presiding Officer, Labour Court, Gurdaspur & Another**, in para 4 it is held as below :—

"4. After hearing counsel for the parties, we are of the opinion that the services of respondent No.2-workman on 2.9.1998 were terminated without any charge sheet or any inquiry. In view of the said fact, the Award of the Labour Court dated 6.6.2006 does not suffer from any patent illegality and material irregularity when the Labour Court ordered reinstatement of respondent No.2-workman with continuity of service and also to grant 50% of the back wages."

18. The aforesaid judgments are applicable to the facts of the present case to an extent. At the most, for the un-satisfactory performance, if any, the management could have initiated the proceedings of domestic inquiry by issuing show cause notice or charge sheet but in the present case neither any show cause notice or charge sheet has been issued to the workman nor any domestic inquiry is held against her. In this regard, MW1 in his cross-examination has stated that the services of the workman are terminated on the ground of her un-satisfactory work. The workman was not issued any charge sheet alleging that her work is unsatisfactory. No domestic inquiry was held against the workman, no retrenchment compensation was given to the workman. Furthermore, from the documents brought on record by the management, it is duly proved on record that the performance of the workman for the financial year 2014-15 was graded as 'B' and the workman has improved her performance in the next term i.e. financial year 2015-16 wherein her performance grade is recorded as 'A'. It is neither pleaded nor proved by the management that after termination from services by the management the workman is gainfully employed. The management has failed to controvert the plea of the workman that she received all the legal dues against full & final receipt Exhibit 'W1/11' under protest. MW1 in his cross-examination stated that total amount of full & final payment comes to ₹ 87,015/- out of which

amount of ₹ 50615/- is paid to the workman towards full & final payment except gratuity for which a gratuity form Exhibit 'M1/8' was sent to the workman for ₹ 36,400/-. MW1 admitted as correct that gratuity form Exhibit 'M1/8' was sent to the workman after about 5 months of termination. The management has failed to prove the actual payment of gratuity to the workman. Above all the management has withheld the details of full & final settlement for the month of January 2019, wherein the reasons for separation is recorded as 'Resign'. In this regard MW1 in his cross-examination stated that it is correct that copy of details of full & final settlement for the month of January 2019, shown to him by Learned Representative for the workman, is a document of Allengers Medical System Limited, which is Exhibit 'WX'. MW1 denied the suggestion as wrong that portion 'B' to 'B1' of Exhibit 'WX' is purposely not mentioned in para 10 of the written statement for the reasons that in portion 'B' to 'B1', the reasons for separation is recorded as resignation. MW1 voluntarily stated that he has mentioned in his affidavit that it is a typographical error. To my opinion, the voluntarily statement of MW1 would prove that at the time of drafting and filing written statement it was to the knowledge of MW1 that in the portion 'B' to 'B1' of Exhibit 'WX', the reason for separation is recorded as 'Resign' and not termination. MW1 has filed the written statement under his signature incorporating therein the entire contents of full & final settlement details Exhibit 'WX' except portion 'B' to 'B1' in order to conceal the reason of separation from the Court. In the affidavit Exhibit 'MW1/A', the plea of typographical error is taken to avoid the consequences of concealment of material fact from the Court.

19. In view of the reasons recorded above, termination of service of the workman in violation of Section 25-F of the ID Act amounts to unfair labour practice and is illegal. Consequently, the order of termination of the services of the workman Exhibit 'W1/10' is hereby set aside and the workman is held entitled to reinstatement with continuity of service along with 50% back wages and all other consequential benefits.

20. Accordingly, issue No.1 is decided in favour of the workman and against the management. Issue No.2 is decided against the management and in favour of the workman.

Relief :

21. In the view of foregoing finding on the issues above, the industrial dispute is allowed. The workman is entitled for reinstatement with continuity of service along with 50% back wages and all other consequential benefits. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . .,

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 01-08-2023.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 11th September, 2023

No. 13/2/26-HII(2)-2023/13244.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 58/2020 dated 03.07.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

KUNDAN LAL S/O SH. SHALI RAM, R/O HOUSE NO. 2502, SECTOR 38-C, CHANDIGARH.
(Workman)

AND

1. THE DIRECTOR / PRINCIPAL, GOVT. MEDICAL COLLEGE AND HOSPITAL EDUCATION & RESEARCH, CHANDIGARH ADMINISTRATION, SECTOR 32 UT CHANDIGARH.
2. GOVERNMENT OF INDIA, MINISTRY OF FAMILY AND HEALTH WELFARE, SECTION 2 THROUGH ITS SECRETARY, NEW DELHI. (Management)

AWARD

1. Kundan Lal, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that earlier workman filed petition under Section 2-A of the ID Act, reference was sent to the Chandigarh Administration, who further sent referred for adjudication to the Labour Court, U.T. Chandigarh and the same was declined by the then Presiding Officer of the Labour Court, and contractual employee was held not to be employee of Government Medical College & Hospital (GMCH). The present case is filed on the basis of fresh cause of action and on different footings as below :—

- A. The workman was appointed through the contractor against the post of OT Attendant. Later on the contractor left. The workman continues to serve more than 240 days continuously without any break. The workman was paid salary by the Director of the GMCH. Thereafter, the workman started claiming regularisation of his services but his services were orally terminated without any show cause notice, charge sheet or without following mandatory provisions of the ID Act.
- B. The workman filed case before the Assistant Labour Commissioner (ALC) under the Minimum Wages Act, including other aggrieved workers. The claim was allowed. The Award was passed by Sh. Hoshier Singh, the then ALC. The management challenged the Award of ALC and filed CWP No.8472 of 2002 before the Hon'ble High Court of Punjab & Haryana. The writ petition was dismissed. The management / GMCH filed LPA No.426 of 2015, vide which the Hon'ble High Court directed the management / GMCH to pay an amount of ₹17,982/-. The said amount was paid through the Court of Chief Judicial Magistrate, Chandigarh, which the workman received from the Court in view of the Award passed by ALC. In this way workman became the employee of GMCH i.e. management No.1 & 2. The Award passed by the then Labour Court, U.T. Chandigarh became redundant. The SLP is still pending for adjudication before the Hon'ble High Court.
- C. The workman along with others workmen moved various representations to the management No.1 & 2 for regularisation of their services, but nothing was done by the management.

- D. The junior workmen to the workman were retained by the management and they are still retained by the management and they are still continuing. Even thereafter, many posts were filled by the management without considering the case of the workman. There are many hospitals under the jurisdiction of Chandigarh Administration, particularly in Sector 48 and many vacancies and many posts of Lt. Attendant are still lying vacant. The management No.1 & 2 are likely to start recruitment. The workman deserves to be appointed against the post.
- E. Finding no other alternative, workman sent registered legal notice to the management and Union of India. The Union of India vide its letter dated 21.08.2019 replied the legal notice.
- F. The whole action on the part of the management in termination, the services of the workman is illegal, unlawful, unconstitutional and contrary to the mandatory provisions of the ID Act. Said illegal termination deserves to be set aside and the workman deserves to be reinstated with continuity of service, full back wages and consequential benefits.
- G. The workman is not gainfully employed anywhere in India with Government or semi-Government or private organisation.
- H. The cause of action arose in the year 1996, when the workman was employed OT Attendant. It further arose when services of the workman terminated illegally without following the mandatory provisions of law. Further cause of action arose when ALC passed the Award in favour of the workman including other workmen and it again arose when department filed CWP, which was dismissed and the department filed LPA and in LPA Hon'ble High Court directed the department to pay ₹17,982/- which was paid through cheque by the management. It further arose when ALC directed the workman to approach the Labour Court. The cause of action is recurring.

The claim statement is well within territorial jurisdiction of the present Court. Prayer is made that termination order may be set aside being unlawful, unconstitutional, illegal, null, void and void ab-initio. The workman may be reinstated against the same post with continuity of services, full back wages with continuity of service, seniority and all other consequential benefits.

3. On notice management No.1 & 2 contested the claim statement by filing joint written reply wherein preliminary objections are raised on the ground that the claim statement in fact is a second reference for the same cause of action, praying for setting aside termination of the workman by contractor M/s Enterclimex Security Pvt. Ltd. vide letter dated 31.12.1997 and claiming reinstatement is not legally maintainable being barred by 'res-judicata' because the workman earlier approached this Court against the aforesaid termination order, which was dismissed by this Court. Further, the second reference on the same cause of action is badly time barred at this stage. The present claim statement is bad for non-joinder of necessary party. The workman was engaged as well as his services were terminated by the contractor M/s Enterclimex Security Co. Pvt. Ltd. The contractor who is necessary party in the present litigation has not been impleaded as a party.

4. Further on merits, it is stated that no fresh cause of action has arisen against the management. The pleas taken by the workman are un-founded. The workman was not engaged by the answering management. As per agreement executed with the contractor, persons engaged by the contractor were / are employees of the contractor for all intents and purposes. The relevant part of contract agreement is re-produced as under :—

"Contract agreement read with clause 10(B.I). The persons deployed by the contractor for work in Government Medical College Hospital, Sector-32, Chandigarh shall be the employees of the contractor for all intents and purposes and in no case, there shall be a relationship of employer and employees between the said persons and the Institute. Clause 10(B.3) provides that the contractor shall ensure that all the employees should get minimum wages and other benefits as are admissible under various Labour Laws. As such no liability of any contractual worker lies with this institute."

The answering management did not issue any appointment letter to the workman. As such, there is no employer-employee relationship between the answering management and workman.

5. The order passed in CWP No.8472 of 2002 and interim order(s) passed in LPA No.426 of 2015 have no relation or nexus with the issue(s) now sought to be raised by the workman. In the said litigation, the issue was / is regarding rate of wages or wage rate to be paid to the persons engaged by the contractor (s) / outsourcing agency / agencies. The prayer of the workman in the claim petition filed before the Authority under The Minimum Wages Act, U.T, Chandigarh was limited to the payment of difference of wages between the minimum rates of wages notified by the Chandigarh Administration and the wage actually paid to the workman by the contractor challenging the termination order and claiming re-instatement was not the issue in said litigation. The Hon'ble High Court had directed to ensure the Payment of Minimum Wages in view of the statutory provisions contained in The Minimum Wages Act and did not hold that the workmen are employee of the answering management and there was / is employee-employer relationship between the answering management and workman. In para 3 of legal notice dated 13.08.2018 the workman himself has admitted that his claim against termination of his services by the contractor vide letter dated 31.12.1997 was rejected by the Tribunal. The aforesaid order in CWP No.8472 has not attained finality and stand challenged in LPA No.426/2015 which is pending for adjudication and only interim orders are passed in said LPA. Said interim order is of no avail to the workman. The workman was employed as well as his services were terminated by the contractor and not by the answering management. Thus, question of regularisation does not arise, especially when the workman is not working in the GMCH and has not placed on record any document / letter to show that he was ever appointed by the answering management. The workman has not given any details of so called representation, therefore answering management is not in a position to respond the averments made and reserve its right to respond and reply as and when the workman specify or attach the so-called representations. The persons engaged by the contractor or outsourcing agency are employees of the contractor concerned and not of the answering management. The contractor appoints the Attendant(s) on contract basis through outsource at their own. Therefore, the workmen were employees of the contractor concerned for all intents and purposes. The answering management has nothing to do or has no role in the engagement and / or termination by the contractor. Further, the workman earlier had approached this Court against the termination by the contractor. The said claim / petition was dismissed. As such, the pleas sought to be advanced by the workman that junior had been retained carry no credence and is / are of no avail to the workman. The claim putforth by the workman through his counsel by way of legal notice dated 13.08.20218 was duly examined and a detailed reply dated 26.11.2019 was sent to the workman's counsel rejecting his claim. It is denied for want of knowledge that workman is not gainfully employed. The present claim statement is abuse of law. The reliance being placed upon orders passed in CWP and LPA are no avail to the workman when the workman has already availed the remedy against his termination and this Tribunal dismissed his claim statement which has now attained finality. That being so, the present claim statement is not maintainable and barred by principle of *res-judicata* and barred by limitation. The territorial jurisdiction of the Court is not disputed. Rest of the averments of claim statement are denied as wrong and prayer is made that claim statement may be dismissed with costs being not legally maintainable and devoid of merits.

6. The workman filed replication wherein the contents of written reply except admitted facts, are denied as wrong and averments of claim statement are reiterated.

7. From the pleadings of the parties, following issues were framed vide order dated 04.03.2022 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the claim of the workman is barred by principle of *res-judicata* ? OPM
3. Whether the claim of the workman is time barred ? OPM

4. Whether the claim of the workman is bad for non-joinder of necessary party ? OPM
5. Relief.

8. In evidence workman Kundan Lal examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 20.04.2023 Learned Representative for the workman tendered documents Exhibit 'W1', Exhibit 'W2' and Mark 'A' to Mark 'E'.

Exhibit 'W1' is the certified copy of Execution Application bearing filing No. 2578/2016 before the court of Ld. CJM, Chandigarh, titled as Shri Ajay Kumar & Ors. Vs Govt. Medical College & Hospital, Sector 32, Chandigarh & Ors. seeking to execute the order dated 26.02.1999 in Application No.10/1998 passed by the court of Shri S. S. Chauhan, Authority under the Minimum Wages Act and further in view of the order dated 19.03.2015 passed by the Hon'ble High Court in CMs-848 and 849-LPA-2015 in/and LPA No.426 of 2015.

Exhibit 'W2' is certified copy of zimni order dated 11.07.2016, 23.08.2016, 01.10.2016, 09.11.2016, 28.11.2016, 07.12.2016, 15.12.2016, 05.12.2016, 21.12.2016, 03.01.2017, 16.01.2017, 21.01.2017, 04.02.2017, 01.03.2017, 05.04.2017, 29.04.2017, 30.05.2017, 31.07.2017, 29.09.2017, 02.12.2017, 06.12.2017 relating to the court of Shri Akashdeep Mahajan, Addl. Civil Judge (Sr. Div.), Chandigarh, pertaining to execution application filing No. 2578 of 2016.

Mark 'A' is photocopy of application dated nil moved by workmen Sohan Singh & Ors. to G.M.C.H. through Shri S.K. Guleria, Advocate regarding joining report of 18 workmen.

Mark 'B' is photocopy of order dated 05.12.1995 of Medical Superintendent, G.M.C.H, Chandigarh.

Mark 'C' is photocopy of joining report dated 03.05.1995 of Bikram Singh S/o Surjan Singh.

Mark 'D' is photocopy of joining report dated 08.05.1995 of Sohan Singh.

Mark 'E' is photocopy of joining report dated 03.05.1995 of Lalit Kumar S/o Ramanand.

9. On 02.05.2023 Learned Representative for the workman tendered document Exhibit 'W3' i.e. copy of order dated 19.03.2015 passed by the Hon'ble High Court in CMs-848 and 849-LPA-2015 in/and LPA No.426 of 2015 titled as Govt. Medical College & Hospital, Chandigarh Versus Authority appointed under Minimum Wages Act and closed the evidence of the workman in affirmative.

10. On the other hand, management examined MW1 Sanjay Kumar - Senior Assistant, Establishment Branch IV, GMCH, Sector 32, Chandigarh who tendered his affidavit Exhibit 'MW1/A'.

11. The management also examined MW2 Surinder - Junior Assistant, Establishment Branch - IV, GMCH, Sector 32, Chandigarh, who tendered his affidavit Exhibit 'MW2/A' along with document Exhibit 'MW2/1' i.e. copy of letter dated 31.12.1997 issued by Chief Controller for Enterclimax Security to The Director Principal, GMCH, Sector 32, Chandigarh relating to the subject of removal of the contractual Ward Attendants.

12. On 03.07.2023 Learned Law Officer for the management closed the evidence.

13. I have heard the arguments of Learned Representative for the workman and Learned Law Officer for the management and perused the judicial file. My issue-wise finding are as below :—

Issue No. 1 & 2 :

14. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 is on the management.

15. To prove its case, workman Kundan Lal examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. To support his oral version Learned Representative for the workman referred documents Exhibit 'W1' to Exhibit 'W3' and Mark 'A' to Mark 'E'.

16. To rebut the case of the workman, management examined MW1 Sanjay Kumar, who vide his affidavit Exhibit 'MW1/A' deposed the entire contents of written reply which are not reproduced here for the sake of brevity.

17. For corroboration Learned Law Officer for the management referred to testimony of MW2 Surinder, who vide his affidavit Exhibit 'MW2/A', apart from the contents of written reply, deposed that these cases are very old i.e. way back of year 1995-96 and the dealing official / Incharge of Establishment - IV Branch had supplied the record available for drafting reply in the instant matter to legal cell. No such joining report, salary disbursement and muster roll since 1995 of workman is traceable. As per record, the workman was deployed on contract basis through outsource by the contractor M/s National Security & Allied Services, Jalandhar. Therefore, all the record of outsource employee, is concerned with the contractor and termination by contractor M/s Enterclimax Security Co. Pvt. Ltd. To support oral version of MW2, Learned Law Officer referred Exhibit 'MW2/1'.

18. From the oral as well as documentary evidence led by the parties, it comes out that the workman was appointed against the post of OT Attendant through contractor National Security & Allied Services, Head Office Punjab (as mentioned in the legal notice dated 13.08.2018 relied upon by the workman). The workman has alleged that his services were terminated without issuing any show cause notice, charge sheet or without following the mandatory provisions of the ID Act. The workman in his claim statement did not mention the date of appointment and date of termination of his services. However, it is own case of the workman that previously he filed a claim statement before the Labour Court / Industrial Tribunal, U.T. Chandigarh challenging his termination order and the said claim statement / industrial dispute reference was dismissed by this Court (in para 3 of legal notice dated 13.08.2018, relied upon by the workman, the date of award passed by the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh is mentioned as 05.03.2007). In the entire pleadings the workman did not mention the particular and details of the previous claim statement wherein he had challenged his termination order. The workman also did not disclose the particular of said claim statement and also did not mention the date of passing of Award vide which the aforesaid claim statement / ID Act has declined by this Court. However, from the copy of legal notice dated 13.08.2018 (relied upon by the workman) in para 3 it is mentioned that his clients filed a case before Labour Commissioner, U.T. Chandigarh for terminating their services. The reference was sent to the appropriate Government of U.T. Chandigarh and reference was also sent to the Labour Court for adjudication but their claim was dismissed by the Labour Court-cum-Industrial Tribunal, Chandigarh vide order dated 05.03.2007. The workman did not place on record the copy of pleadings in the previous industrial dispute reference decided vide Award dated 05.03.2007 by this Court and also did not place on record copy of the said Award dated 05.03.2007. However, the fact remains that the workman in previous industrial dispute reference challenged his termination order and the said previous industrial dispute reference was dismissed by this Labour Court-cum-Industrial Tribunal vide order dated 05.03.2007. Till date the workman has not challenged the order / Award dated 05.03.2007, thus the same has become final.

19. It is own plea of the workman that he was appointed to the post of OT Attendant by the contractor and later on the contractor left. The workman in the claim statement did not mention up to which year he remained under the contractor or in which month or year the contractor left. However, when put to cross-examination the workman states that he worked as outsource employee in GMCH up to March 1998, he refused to work under new outsource agency, therefore, he was terminated from job. He was not issued any termination letter or relieving letter by the GMCH, Sector 32, Chandigarh. After termination he

filed a case seeking payment of minimum wages before Assistant Labour Commissioner, U.T. Chandigarh. The workman did not plead that till what / which date he was paid salary by the contractor.

20. The workman has alleged that although his previous claim statement whereby he challenged the termination order and sought reinstatement was dismissed by this Court but now present cause of action arises in his favour in view of the interim order passed by the Hon'ble High Court in LPA No.426/2015. Learned Representative for the workman argued that the workman filed claim application before the Assistant Labour Commissioner, U.T. Chandigarh under the Minimum Wages Act, which was allowed by the Assistant Labour Commissioner. The management challenged the order of Assistant Labour Commissioner by filing CWP No. 8472 of 2002 which was dismissed. Thereafter management of GMCH filed LPA No.426/2015 before the Hon'ble High Court wherein interim order has passed and direction was issued to the management / GMCH to pay arrears of ₹17,982/- to the workman. The management paid the said arrears to the workman by cheque and said amount was received by the workman in the Court of CJM, Chandigarh. LPA is pending. Learned Representative for the workman laid much stress upon the fact that since the payment is made by management of GMCH to the workman, therefore the previous order / Award dated 05.03.2007, whereby the claim of the workman challenging termination order and seeking reinstatement was dismissed has become redundant. The workman has become employee of GMCH / management No.1 & 2 therefore entitled to regularisation of his services.

21. On the other hand, Learned Law Officer for the management argued that claim application before the ALC is limited to the payment of difference of wages between the minimum rate of wages notified by the Chandigarh Administration and the wage actually paid to the workman by the contractor. The termination order was neither under challenge nor an issue before the ALC. The payment of difference of wages made by the management in compliance with the direction of Hon'ble High Court in LPA No.426/2015 in no manner has any connection with the termination or regularisation of services of the workman. To my opinion, it is undeniable fact that the workman filed claim application before the ALC, U.T. Chandigarh seeking recovery of difference of wages of Minimum Wages Act and in the said case neither the termination order was under challenge nor in issue. The matter confined in claim application before the ALC was payment of difference of wages only. In this regard, AW1 in his cross-examination stated that after termination he filed a case seeking payment of wages before the ALC, U.T. Chandigarh. The workman has placed on record copy of order dated March 19, 2015 passed by the Hon'ble High Court in CMs 848 and 849 - LPA-2015 in / and LPA No.426/2015 titled as Government Medical College & Hospital, Chandigarh Versus Authority appointed under the Minimum Wages Act vide Exhibit 'W3'. The relevant portion of Exhibit 'W3' is reproduced as below :—

"The Chandigarh Administration is impleaded as a party. It shall bring all the necessary notifications relating to the applicability of the Minimum Wages Act to the Government Medical College & Hospital, Sector-32, Chandigarh-appellant.

In the meantime, the appellant shall make the payment due to those who had filed execution on furnishing necessary surety for restitution of the amount or excess amount, if any, to the satisfaction of the executing authority.

List for hearing on 14.07.2015."

Admittedly the LPA No.426/2015 is pending before the Hon'ble High Court. Exhibit 'W2' is the copy of all the zimni orders passed in the execution proceedings titled as **Ajay Kumar & Others Versus GMCH-32, Chandigarh** before the Court of ACJ(SD). The relevant portion of order dated 07.12.2016 of ACJ(SD), Chandigarh is reproduced as below :—

"Sh. Yadwinder Singh, Law Officer, GMCH-32 Chandigarh for the respondents no. 1 & 2 suffered a statement that he has brought 29 demand drafts total amounting to Rs.5,21,438/- issued in favour of 29 persons i.e., decree holders

mentioned in the execution application as per the detailed description given in letter dated 02.11.2016 which is already Ex.PX. Kindly placed on record all the 29 demand drafts as mentioned in Ex.PX and it is requested that the demand drafts shall be handed over to the decree holders on their furnishing surety as per the orders of Hon'ble High Court, Chandigarh. In view of above, the above said demand drafts are taken and Ahlmad of this court is directed to tagged the above said drafts in a proper way.

Learned counsel for the applicant undertake to furnish surety bonds within a week in view of order passed by the Hon'ble High Court, Chandigarh. Statement recorded separately. Now, to come up on 15.12.2016 for furnishing the security by the applicants."

22. It is undeniable fact that all the applicants / DHs of execution proceedings furnished requisite surety and the amount of ₹17,982/- each were released to them in the form of demand draft. Moreover, it is own case of the workman that in compliance with the interim order of Hon'ble High Court passed in LPA No.426/2015 the GMCH, Sector 32 made payment which was received by the workman through the executing Court of CJM / ACJ(SD), Chandigarh.

23. Now the question before this Court is if the interim order dated 19.03.2015 / Exhibit 'W3' in any manner relate to the termination or regularisation of service of the workman. Answer is 'No' because payment of difference of wages to the GMCH, Sector 32 to the workman in compliance with the order of Hon'ble High Court in the matter relating to payment of wages under Minimum Wages Act, cannot be interpreted to mean that by making payment by GMCH / or receiving payment by the workman of difference of wages, the termination order will become invalid of its own or the previous Award dated 05.03.2007 passed by Labour Court, Chandigarh dismissing the IDR / claim statement of the workman seeking to set aside termination order, will become redundant. The termination of service, reinstatement, regularisation does not fall within the purview of Minimum Wages Act, hence order Exhibit 'W3' in no manner has any impact on the termination of the workman. The GMCH, Sector 32, Chandigarh / management No. 1 & 2 neither issued any appointment letter nor termination order to the workman. Learned Representative for the workman raised objection to the termination order dated 31.12.1997 / Exhibit 'MW2/1' brought into evidence by MW2. Exhibit 'MW2/1' is the letter of termination the services of the workman by the employer / contractor Enterclimax w.e.f. 31.12.1997. The workman has not impleaded the employer Enterclimax as party to the claim statement, thus claim statement is bad for non-joinder of necessary party. Above all during course of arguments Learned Representative of the workman failed to controvert the fact that in previous IDR the termination order vide letter dated 31.12.1997 / Exhibit 'M2/1' was under challenge. If the termination Exhibit 'MW2/1' is ignored, then also workman has failed to prove that his services were terminated by management No.1 & 2 / GMCH Sector 32, Chandigarh. AW1 in his cross-examination stated that he worked as outsource employee in GMCH-32, Chandigarh up to March, 1998. He refused to work under the new agency, therefore he was terminated from the job. He was not issued any termination letter by GMCH, Sector 32, Chandigarh. The aforesaid version of AW1 would prove that from the date of appointment till termination of service he was working with GMCH, Sector 32, Chandigarh being outsource employee under the contractor. In this manner the workman was employee of the contractor not GMCH, Sector 32, Chandigarh. So the question of termination of services of the contractual employee by the GMCH, Sector 32, Chandigarh does not arise. The contractual employee to seek regularisation of services must come through the selection process. Here it is not the case of the workman that they have qualified any selection process. Hon'ble High Court of Delhi in case of ***Desh Deepak Srivastava Versus Delhi High Court & Another, CWP (C) No.9570/2015*** held that a contractual employee cannot claim any right to regularisation or absorption of services, if continued on an ad-hoc for decades.

24. Moreover, the issue of termination of the services of the workman have already been adjudicated upon by this Labour Court & Industrial Tribunal, U.T. Chandigarh vide Award dated 05.03.2007 vide which the claim of the workman seeking to set aside termination order, was discussed. The workman did not

challenge the Award dated 05.03.2007 before the competent Court of law. Therefore, the Award dated 05.03.2007 has attained finality. The workman is not entitled to re-agitate the same issue which is already decided by the competent court and which has become final. Consequently, the present claim is barred by principle of *res-judicata* under Section 11 of CPC.

25. Accordingly, issue No.1 is decided against the workman and in favour of the management. Issue No. 2 is decided in favour of the management and against the workman.

Issue No. 3 :

26. Onus to prove this issue is on the management.

27. The workman has alleged that his services were terminated in the year 1998. He raised 2nd time industrial dispute by raising demand notice in the year 2019 and presented the present claim on 25.08.2020 i.e. after about 22 years of raising demand notice. Thus, the present claim statement is barred by limitation.

28. Accordingly, this issue is decided in favour of the management and against the workman.

Issue No. 4 :

29. Onus to prove this issue is on the management.

30. The contractor / (last contractor i.e. Enterclimex) was the employer of the workman. The workman has challenged his termination of services without impleading his employer, who was a necessary party. Thus, the present claim statement is bad for non-joinder of necessary party.

31. Accordingly, this issue is decided in favour of the management and against the workman.

Relief :

32. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

Dated : 03-07-2023.

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 11th September, 2023

No. 13/2/23-HII(2)-2023/13246.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 55/2020 dated 03.07.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RANJIT SINGH S/O SH. GURMEET SINGH R/O VILLAGE NAGLIYAN TEHSIL KHARAR,
MOHALI, PUNJAB. (Workman)

AND

1. THE DIRECTOR / PRINCIPAL, GOVT. MEDICAL COLLEGE AND HOSPITAL EDUCATION & RESEARCH, CHANDIGARH ADMINISTRATION, SECTOR 32, UT CHANDIGARH.
2. GOVERNMENT OF INDIA, MINISTRY OF FAMILY AND HEALTH WELFARE, SECTION 2 THROUGH ITS SECRETARY, NEW DELHI. (Management)

AWARD

1. Ranjit Singh, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that earlier workman filed petition under Section 2-A of the ID Act, reference was sent to the Chandigarh Administration, who further sent referred for adjudication to the Labour Court, U.T. Chandigarh and the same was declined by the then Presiding Officer of the Labour Court, and contractual employee was held not to be employee of Government Medical College & Hospital (GMCH). The present case is filed on the basis of fresh cause of action and on different footings as below :—

- A. The workman was appointed through the contractor against the post of Ward Attendant. Later on the contractor left. The workman continues to serve more than 240 days continuously without any break. The workman was paid salary by the Director of the GMCH. Thereafter, the workman started claiming regularisation of his services but his services were orally terminated without any show cause notice, charge sheet or without following mandatory provisions of the ID Act.
- B. The workman filed case before the Assistant Labour Commissioner (ALC) under the Minimum Wages Act, including other aggrieved workers. The claim was allowed. The Award was passed by Sh. Hoshiar Singh, the then ALC. The management challenged the Award of ALC and filed CWP No.8472 of 2002 before the Hon'ble High Court of Punjab & Haryana. The writ petition was dismissed. The management / GMCH filed LPA No.426 of 2015, vide which the Hon'ble High Court directed the management / GMCH to pay an amount of ₹17,982/-. The said amount was paid through the Court of Chief Judicial Magistrate, Chandigarh, which the workman received from the Court in view of the Award passed by ALC. In this way workman became the employee of GMCH i.e. management No.1 & 2. The Award passed by the then Labour Court, U.T. Chandigarh became redundant. The SLP is still pending for adjudication before the Hon'ble High Court.
- C. The workman along with others workmen moved various representations to the management No.1 & 2 for regularisation of their services, but nothing was done by the management.

- D. The junior workmen to the workman were retained by the management and they are still retained by the management and they are still continuing. Even thereafter, many posts were filled by the management without considering the case of the workman. There are many hospitals under the jurisdiction of Chandigarh Administration, particularly in Sector 48 and many vacancies and many posts of Lt. Attendant are still lying vacant. The management No.1 & 2 are likely to start recruitment. The workman deserves to be appointed against the post.
- E. Finding no other alternative, workman sent registered legal notice to the management and Union of India. The Union of India vide its letter dated 21.08.2019 replied the legal notice.
- F. The whole action on the part of the management in termination, the services of the workman is illegal, unlawful, unconstitutional and contrary to the mandatory provisions of the ID Act. Said illegal termination deserves to be set aside and the workman deserves to be reinstated with continuity of service, full back wages and consequential benefits.
- G. The workman is not gainfully employed anywhere in India with Government or semi-Government or private organisation.
- H. The cause of action arose in the year 1996, when the workman was employed Ward Attendant. It further arose when services of the workman terminated illegally without following the mandatory provisions of law. Further cause of action arose when ALC passed the Award in favour of the workman including other workmen and it again arose when department filed CWP, which was dismissed and the department filed LPA and in LPA Hon'ble High Court directed the department to pay ₹17,982/- which was paid through cheque by the management. It further arose when ALC directed the workman to approach the Labour Court. The cause of action is recurring.

The claim statement is well within territorial jurisdiction of the present Court. Prayer is made that termination order may be set aside being unlawful, unconstitutional, illegal, null, void and void ab-initio. The workman may be reinstated against the same post with continuity of services, full back wages with continuity of service, seniority and all other consequential benefits.

3. On notice management No.1 & 2 contested the claim statement by filing joint written reply wherein preliminary objections are raised on the ground that the claim statement in fact is a second reference for the same cause of action, praying for setting aside termination of the workman by contractor M/s Enterclimex Security Pvt. Ltd. vide letter dated 31.12.1997 and claiming reinstatement is not legally maintainable being barred by 'res-judicata' because the workman earlier approached this Court against the aforesaid termination order, which was dismissed by this Court. Further, the second reference on the same cause of action is badly time barred at this stage. The present claim statement is bad for non-joinder of necessary party. The workman was engaged as well as his services were terminated by the contractor M/s Enterclimex Security Co. Pvt. Ltd. The contractor who is necessary party in the present litigation has not been impleaded as a party.

4. Further on merits, it is stated that no fresh cause of action has arisen against the management. The pleas taken by the workman are un-founded. The workman was not engaged by the answering management. As per agreement executed with the contractor, persons engaged by the contractor were / are employees of the contractor for all intents and purposes. The relevant part of contract agreement is re-produced as under :—

"Contract agreement read with clause 10(B.I). The persons deployed by the contractor for work in Government Medical College Hospital, Sector-32, Chandigarh shall be the employees of the contractor for all intents and purposes and in no case, there shall be a relationship of employer and employees between the said persons and the Institute. Clause 10(B.3) provides that the contractor shall ensure that all the employees should get minimum wages and other benefits as are admissible under various Labour Laws. As such no liability of any contractual worker lies with this institute."

The answering management did not issue any appointment letter to the workman. As such, there is no employer-employee relationship between the answering management and workman.

5. The order passed in CWP No.8472 of 2002 and interim order(s) passed in LPA No.426 of 2015 have no relation or nexus with the issue(s) now sought to be raised by the workman. In the said litigation, the issue was / is regarding rate of wages or wage rate to be paid to the persons engaged by the contractor (s) / outsourcing agency / agencies. The prayer of the workman in the claim petition filed before the Authority under The Minimum Wages Act, U.T, Chandigarh was limited to the payment of difference of wages between the minimum rates of wages notified by the Chandigarh Administration and the wage actually paid to the workman by the contractor challenging the termination order and claiming re-instatement was not the issue in said litigation. The Hon'ble High Court had directed to ensure the Payment of Minimum Wages in view of the statutory provisions contained in The Minimum Wages Act and did not hold that the workmen are employee of the answering management and there was / is employee-employer relationship between the answering management and workman. In para 3 of legal notice dated 13.08.2018 the workman himself has admitted that his claim against termination of his services by the contractor vide letter dated 31.12.1997 was rejected by the Tribunal. The aforesaid order in CWP No.8472 has not attained finality and stand challenged in LPA No.426/2015 which is pending for adjudication and only interim orders are passed in said LPA. Said interim order is of no avail to the workman. The workman was employed as well as his services were terminated by the contractor and not by the answering management. Thus, question of regularisation does not arise, especially when the workman is not working in the GMCH and has not placed on record any document / letter to show that he was ever appointed by the answering management. The workman has not given any details of so called representation, therefore answering management is not in a position to respond the averments made and reserve its right to respond and reply as and when the workman specify or attach the so-called representations. The persons engaged by the contractor or outsourcing agency are employees of the contractor concerned and not of the answering management. The contractor appoints the Attendant(s) on contract basis through outsource at their own. Therefore, the workmen were employees of the contractor concerned for all intents and purposes. The answering management has nothing to do or has no role in the engagement and / or termination by the contractor. Further, the workman earlier had approached this Court against the termination by the contractor. The said claim / petition was dismissed. As such, the pleas sought to be advanced by the workman that junior had been retained carry no credence and is / are of no avail to the workman. The claim putforth by the workman through his counsel by way of legal notice dated 13.08.20218 was duly examined and a detailed reply dated 26.11.2019 was sent to the workman's counsel rejecting his claim. It is denied for want of knowledge that workman is not gainfully employed. The present claim statement is abuse of law. The reliance being placed upon orders passed in CWP and LPA are no avail to the workman when the workman has already availed the remedy against his termination and this Tribunal dismissed his claim statement which has now attained finality. That being so, the present claim statement is not maintainable and barred by principle of *res-judicata* and barred by limitation. The territorial jurisdiction of the Court is not disputed. Rest of the averments of claim statement are denied as wrong and prayer is made that claim statement may be dismissed with costs being not legally maintainable and devoid of merits.

6. The workman filed replication wherein the contents of written reply except admitted facts, are denied as wrong and averments of claim statement are reiterated.

7. From the pleadings of the parties, following issues were framed vide order dated 04.03.2022 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW

2. Whether the claim of the workman is barred by principle of *res-judicata* ? OPM
3. Whether the claim of the workman is time barred ? OPM
4. Whether the claim of the workman is bad for non-joinder of necessary party ? OPM
5. Relief.

8. In evidence workman Ranjit Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 20.04.2023 Learned Representative for the workman tendered documents Exhibit 'W1', Exhibit 'W2' and Mark 'A' to Mark 'E'.

Exhibit 'W1' is the certified copy of Execution Application bearing filing No. 2578/2016 before the court of Ld. CJM, Chandigarh, titled as Shri Ajay Kumar & Ors. Vs Govt. Medical College & Hospital, Sector 32, Chandigarh & Ors. seeking to execute the order dated 26.02.1999 in Application No.10/1998 passed by the court of Shri S. S. Chauhan, Authority under the Minimum Wages Act and further in view of the order dated 19.03.2015 passed by the Hon'ble High Court in CMs-848 and 849-LPA-2015 in/and LPA No.426 of 2015.

Exhibit 'W2' is certified copy of zimni order dated 11.07.2016, 23.08.2016, 01.10.2016, 09.11.2016, 28.11.2016, 07.12.2016, 15.12.2016, 05.12.2016, 21.12.2016, 03.01.2017, 16.01.2017, 21.01.2017, 04.02.2017, 01.03.2017, 05.04.2017, 29.04.2017, 30.05.2017, 31.07.2017, 29.09.2017, 02.12.2017, 06.12.2017 relating to the court of Shri Akashdeep Mahajan, Addl. Civil Judge (Sr. Div.), Chandigarh, pertaining to execution application filing No. 2578 of 2016.

Mark 'A' is photocopy of application dated nil moved by workmen Sohan Singh & Ors. to G.M.C.H. through Shri S.K. Guleria, Advocate regarding joining report of 18 workmen.

Mark 'B' is photocopy of order dated 05.12.1995 of Medical Superintendent, G.M.C.H, Chandigarh.

Mark 'C' is photocopy of joining report dated 03.05.1995 of Bikram Singh S/o Surjan Singh.

Mark 'D' is photocopy of joining report dated 08.05.1995 of Sohan Singh.

Mark 'E' is photocopy of joining report dated 03.05.1995 of Lalit Kumar S/o Ramanand.

9. On 02.05.2023 Learned Representative for the workman tendered document Exhibit 'W3' i.e. copy of order dated 19.03.2015 passed by the Hon'ble High Court in CMs-848 and 849-LPA-2015 in/and LPA No.426 of 2015 titled as Govt. Medical College & Hospital, Chandigarh Versus Authority appointed under Minimum Wages Act and closed the evidence of the workman in affirmative.

10. On the other hand, management examined MW1 Sanjay Kumar - Senior Assistant, Establishment Branch IV, GMCH, Sector 32, Chandigarh who tendered his affidavit Exhibit 'MW1/A'.

11. The management also examined MW2 Surinder - Junior Assistant, Establishment Branch - IV, GMCH, Sector 32, Chandigarh, who tendered his affidavit Exhibit 'MW2/A' along with document Exhibit 'MW2/1' i.e. copy of letter dated 31.12.1997 issued by Chief Controller for Enterclimax Security to The Director Principal, GMCH, Sector 32, Chandigarh relating to the subject of removal of the contractual Ward Attendants.

12. On 03.07.2023 Learned Law Officer for the management closed the evidence.

13. I have heard the arguments of Learned Representative for the workman and Learned Law Officer for the management and perused the judicial file. My issue-wise finding are as below :—

Issue No. 1 & 2 :

14. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 is on the management.

15. To prove its case, workman Ranjit Singh examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. To support his oral version Learned Representative for the workman referred documents Exhibit 'W1' to Exhibit 'W3' and Mark 'A' to Mark 'E'.

16. To rebut the case of the workman, management examined MW1 Sanjay Kumar, who vide his affidavit Exhibit 'MW1/A' deposed the entire contents of written reply which are not reproduced here for the sake of brevity.

17. For corroboration Learned Law Officer for the management referred to testimony of MW2 Surinder, who vide his affidavit Exhibit 'MW2/A', apart from the contents of written reply, deposed that these cases are very old i.e. way back of year 1995-96 and the dealing official / Incharge of Establishment - IV Branch had supplied the record available for drafting reply in the instant matter to legal cell. No such joining report, salary disbursement and muster roll since 1995 of workman is traceable. As per record, the workman was deployed on contract basis through outsource by the contractor M/s National Security & Allied Services, Jalandhar. Therefore, all the record of outsource employee, is concerned with the contractor and termination by contractor M/s Enterclimax Security Co. Pvt. Ltd. To support oral version of MW2, Learned Law Officer referred Exhibit 'MW2/1'.

18. From the oral as well as documentary evidence led by the parties, it comes out that the workman was appointed against the post of Ward Attendant through contractor National Security & Allied Services, Head Office Punjab (as mentioned in the legal notice dated 13.08.2018 relied upon by the workman). The workman has alleged that his services were terminated without issuing any show cause notice, charge sheet or without following the mandatory provisions of the ID Act. The workman in his claim statement did not mention the date of appointment and date of termination of his services. However, it is own case of the workman that previously he filed a claim statement before the Labour Court / Industrial Tribunal, U.T. Chandigarh challenging his termination order and the said claim statement / industrial dispute reference was dismissed by this Court (in para 3 of legal notice dated 13.08.2018, relied upon by the workman, the date of award passed by the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh is mentioned as 05.03.2007). In the entire pleadings the workman did not mention the particular and details of the previous claim statement wherein he had challenged his termination order. The workman also did not disclose the particular of said claim statement and also did not mention the date of passing of Award vide which the aforesaid claim statement / ID Act has declined by this Court. However, from the copy of legal notice dated 13.08.2018 (relied upon by the workman) in para 3 it is mentioned that his clients filed a case before Labour Commissioner, U.T. Chandigarh for terminating their services. The reference was sent to the appropriate Government of U.T. Chandigarh and reference was also sent to the Labour Court for adjudication but their claim was dismissed by the Labour Court-cum-Industrial Tribunal, Chandigarh vide order dated 05.03.2007. The workman did not place on record the copy of pleadings in the previous industrial dispute reference decided vide Award dated 05.03.2007 by this Court and also did not place on record copy of the said Award dated 05.03.2007. However, the fact remains that the workman in previous industrial dispute reference challenged his termination order and the said previous industrial dispute reference was dismissed by this Labour Court-cum-Industrial Tribunal vide order dated 05.03.2007. Till date the workman has not challenged the order / Award dated 05.03.2007, thus the same has become final.

19. It is own plea of the workman that he was appointed to the post of Ward Attendant by the contractor and later on the contractor left. The workman in the claim statement did not mention up to which year he remained under the contractor or in which month or year the contractor left. However, when put to cross-examination the workman states that he worked as outsource employee in GMCH up to March 1998, he refused to work under new outsource agency, therefore, he was terminated from job. He was not issued any termination letter or relieving letter by the GMCH, Sector 32, Chandigarh. After termination he filed a case seeking payment of minimum wages before Assistant Labour Commissioner, U.T. Chandigarh. The workman did not plead that till what / which date he was paid salary by the contractor.

20. The workman has alleged that although his previous claim statement whereby he challenged the termination order and sought reinstatement was dismissed by this Court but now present cause of action arises in his favour in view of the interim order passed by the Hon'ble High Court in LPA No.426/2015. Learned Representative for the workman argued that the workman filed claim application before the Assistant Labour Commissioner, U.T. Chandigarh under the Minimum Wages Act, which was allowed by the Assistant Labour Commissioner. The management challenged the order of Assistant Labour Commissioner by filing CWP No.8472 of 2002 which was dismissed. Thereafter management of GMCH filed LPA No.426/2015 before the Hon'ble High Court wherein interim order has passed and direction was issued to the management / GMCH to pay arrears of ₹17,982/- to the workman. The management paid the said arrears to the workman by cheque and said amount was received by the workman in the Court of CJM, Chandigarh. LPA is pending. Learned Representative for the workman laid much stress upon the fact that since the payment is made by management of GMCH to the workman, therefore the previous order / Award dated 05.03.2007, whereby the claim of the workman challenging termination order and seeking reinstatement was dismissed has become redundant. The workman has become employee of GMCH / management No.1 & 2 therefore entitled to regularisation of his services.

21. On the other hand, Learned Law Officer for the management argued that claim application before the ALC is limited to the payment of difference of wages between the minimum rate of wages notified by the Chandigarh Administration and the wage actually paid to the workman by the contractor. The termination order was neither under challenge nor an issue before the ALC. The payment of difference of wages made by the management in compliance with the direction of Hon'ble High Court in LPA No.426/2015 in no manner has any connection with the termination or regularisation of services of the workman. To my opinion, it is undeniable fact that the workman filed claim application before the ALC, U.T. Chandigarh seeking recovery of difference of wages of Minimum Wages Act and in the said case neither the termination order was under challenge nor in issue. The matter confined in claim application before the ALC was payment of difference of wages only. In this regard, AW1 in his cross-examination stated that after termination he filed a case seeking payment of wages before the ALC, U.T. Chandigarh. The workman has placed on record copy of order dated March 19, 2015 passed by the Hon'ble High Court in CMs 848 and 849 - LPA-2015 in / and LPA No.426/2015 titled as Government Medical College & Hospital, Chandigarh Versus Authority appointed under the Minimum Wages Act vide Exhibit 'W3'. The relevant portion of Exhibit 'W3' is reproduced as below :—

"The Chandigarh Administration is impleaded as a party. It shall bring all the necessary notifications relating to the applicability of the Minimum Wages Act to the Government Medical College & Hospital, Sector-32, Chandigarh-appellant.

In the meantime, the appellant shall make the payment due to those who had filed execution on furnishing necessary surety for restitution of the amount or excess amount, if any, to the satisfaction of the executing authority.

List for hearing on 14.07.2015."

Admittedly the LPA No.426/2015 is pending before the Hon'ble High Court. Exhibit 'W2' is the copy of all the zimni orders passed in the execution proceedings titled as **Ajay Kumar & Others Versus GMCH-32, Chandigarh** before the Court of ACJ(SD). The relevant portion of order dated 07.12.2016 of ACJ(SD), Chandigarh is reproduced as below :—

"Sh. Yadwinder Singh, Law Officer, GMCH-32 Chandigarh for the respondents no. 1 & 2 suffered a statement that he has brought 29 demand drafts total amounting to Rs.5,21,438/- issued in favour of 29 persons i.e., decree holders mentioned in the execution application as per the detailed description given in letter dated 02.11.2016 which is already Ex.PX. Kindly placed on record all the 29 demand drafts as mentioned in Ex.PX and it is requested that the demand drafts shall be handed over to the decree holders on their furnishing surety as per the orders of Hon'ble High Court, Chandigarh. In view of above, the above said demand drafts are taken and Ahlmad of this court is directed to tagged the above said drafts in a proper way.

Learned counsel for the applicant undertake to furnish surety bonds within a week in view of order passed by the Hon'ble High Court, Chandigarh. Statement recorded separately. Now, to come up on 15.12.2016 for furnishing the security by the applicants."

22. It is undeniable fact that all the applicants / DHs of execution proceedings furnished requisite surety and the amount of ₹17,982/- each were released to them in the form of demand draft. Moreover, it is own case of the workman that in compliance with the interim order of Hon'ble High Court passed in LPA No.426/2015 the GMCH, Sector 32 made payment which was received by the workman through the executing Court of CJM / ACJ(SD), Chandigarh.

23. Now the question before this Court is if the interim order dated 19.03.2015 / Exhibit 'W3' in any manner relate to the termination or regularisation of service of the workman. Answer is 'No' because payment of difference of wages to the GMCH, Sector 32 to the workman in compliance with the order of Hon'ble High Court in the matter relating to payment of wages under Minimum Wages Act, cannot be interpreted to mean that by making payment by GMCH / or receiving payment by the workman of difference of wages, the termination order will become invalid of its own or the previous Award dated 05.03.2007 passed by Labour Court, Chandigarh dismissing the IDR / claim statement of the workman seeking to set aside termination order, will become redundant. The termination of service, reinstatement, regularisation does not fall within the purview of Minimum Wages Act, hence order Exhibit 'W3' in no manner has any impact on the termination of the workman. The GMCH, Sector 32, Chandigarh / management No.1 & 2 neither issued any appointment letter nor termination order to the workman. Learned Representative for the workman raised objection to the termination order dated 31.12.1997 / Exhibit 'MW2/1' brought into evidence by MW2. Exhibit 'MW2/1' is the letter of termination the services of the workman by the employer / contractor Enterclimex w.e.f. 31.12.1997. The workman has not impleaded the employer Enterclimex as party to the claim statement, thus claim statement is bad for non-joinder of necessary party. Above all during course of arguments Learned Representative of the workman failed to controvert the fact that in previous IDR the termination order vide letter dated 31.12.1997 / Exhibit 'M2/1' was under challenge. If the termination Exhibit 'MW2/1' is ignored, then also workman has failed to prove that his services were terminated by management No.1 & 2 / GMCH Sector 32, Chandigarh. AW1 in his cross-examination stated that he worked as outsource employee in GMCH-32, Chandigarh up to March, 1998. He refused to work under the new agency, therefore he was terminated from the job. He was not issued any termination letter by GMCH, Sector 32, Chandigarh. The aforesaid version of AW1 would prove that from the date of appointment till termination of service he was working with GMCH, Sector 32, Chandigarh being

outsource employee under the contractor. In this manner the workman was employee of the contractor not GMCH, Sector 32, Chandigarh. So the question of termination of services of the contractual employee by the GMCH, Sector 32, Chandigarh does not arise. The contractual employee to seek regularisation of services must come through the selection process. Here it is not the case of the workman that they have qualified any selection process. Hon'ble High Court of Delhi in case of ***Desh Deepak Srivastava Versus Delhi High Court & Another, CWP (C) No.9570/2015*** held that a contractual employee cannot claim any right to regularisation or absorption of services, if continued on an ad-hoc for decades.

24. Moreover, the issue of termination of the services of the workman have already been adjudicated upon by this Labour Court & Industrial Tribunal, U.T. Chandigarh vide Award dated 05.03.2007 vide which the claim of the workman seeking to set aside termination order, was discussed. The workman did not challenge the Award dated 05.03.2007 before the competent Court of law. Therefore, the Award dated 05.03.2007 has attained finality. The workman is not entitled to re-agitate the same issue which is already decided by the competent court and which has become final. Consequently, the present claim is barred by principle of *res-judicata* under Section 11 of CPC.

25. Accordingly, issue No.1 is decided against the workman and in favour of the management. Issue No. 2 is decided in favour of the management and against the workman.

Issue No. 3 :

26. Onus to prove this issue is on the management.

27. The workman has alleged that his services were terminated in the year 1998. He raised 2nd time industrial dispute by raising demand notice in the year 2019 and presented the present claim on 25.08.2020 i.e. after about 22 years of raising demand notice. Thus, the present claim statement is barred by limitation.

28. Accordingly, this issue is decided in favour of the management and against the workman.

Issue No. 4 :

29. Onus to prove this issue is on the management.

30. The contractor / (last contractor i.e. Enterclimex) was the employer of the workman. The workman has challenged his termination of services without impleading his employer, who was a necessary party. Thus, the present claim statement is bad for non-joinder of necessary party.

31. Accordingly, this issue is decided in favour of the management and against the workman.

Relief :

32. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . .,

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 03-07-2023.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Asha Sidhu, W/o Late Partap Sidhu, # 3688, Sector 25-D, Chandigarh, have changed my name from Asha Sidhu to Asha.

[1202-1]

I, Sonu Chopra, D/o Sh. Pawan Chopra, R/o House No. 1013, Sector 19-B, Chandigarh, have changed my name from Sonu Chopra to Sanvi Chopra.

[1203-1]

I, Komal Goswami, W/o Pankaj Kumar Goswami, R/o 447/1, Sector 45-A, Chandigarh, have changed my name to Komal Prabhakar.

[1204-1]

I, B.L. Gupta, S/o Bishambhar Dayal Gupta, # 1091, Sector 29-B, Chandigarh, have changed my name to Banwari Lal Gupta.

[1205-1]

I, Seema Sharma, W/o Rajbir Singh, # 1595, Phase-2, Ramdarbar, Chandigarh, have changed my name to Kirna Devi.

[1206-1]

I, Imtiyaz Ahmed Ansari, S/o Muneer Ahmed, R/o 1205, Ground Floor, Sector 44-B, Chandigarh-160047, have changed my name from Imtiyaz Ahmed Ansari to Imtiyaz Ahmed. All concerned please may note.

[1207-1]

I, Sham Lal, S/o Bhagat Ram, R/o # 206, Kaimbwala, Chandigarh, declare that my son school record wrongly entered his name Dakhsh, my name Shyam Lal and my wife name Surinder. Correct name is Daksh. Father-Sham Lal and Mother-Surinder Devi. All concerned note.

[1208-1]

I, Angelia, D/o Brig Manpreet Singh Baghi, R/o # 1925, Sector 34-D, Chandigarh, have changed my name from Angelia to Angelia Baghi.

[1209-1]

I, Simarjit Singh Sandhu, S/o Kanwarjit Singh Sandhu, R/o 1179, Universal Enclave, Sector 48-B, Chandigarh-160047, have changed my name from Simarjit Singh to Simarjit Singh Sandhu. All concerned please may note.

[1210-1]

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